

1 BEFORE THE
2 ILLINOIS COMMERCE COMMISSION

3 IN THE MATTER OF:)
4)
5 CITIZENS UTILITY BOARD,)
6 CITIZENS ACTION/ILLINOIS and)
7 AARP,)
8)
9 vs.) No. 08-0175
10)
11 ILLINOIS ENERGY SAVINGS CORP.)
12 d/b/a U.S. ENERGY SAVINGS)
13 CORP.)
14)
15 Complaint pursuant to 220 ILCS)
16 5/19-110 or 19-115.)
17
18 Chicago, Illinois
19 October 15, 2009

20 Met, pursuant to notice, at Chicago.

21 BEFORE:

22 DAVID GILBERT, Administrative Law Judge

APPEARANCES:

 CITIZENS UTILITY BOARD, by
 MS. JULIE L. SODERNA
 309 West Washington Street
 Suite 800
 Chicago, Illinois 60606
 (312) 263-4282
 for the Citizens Utility Board;

1 LOWIS & GELLEN, by
2 MR. MARTIN M. McMANAMAN
3 MR. KEVIN J. CLANCY
4 200 West Adams Street
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8 for Illinois Energy Savings Corporation;
9
10 ILLINOIS COMMERCE COMMISSION, by
11 MS. JENNIFER L. LIN
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SULLIVAN REPORTING COMPANY, by
Alisa A. Sawka, CSR
License No. 084-004588

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
Gord Potter	388	392		537	533
Alex Zermeno	550	553	568	567	

1	<u>E X H I B I T S</u>		
2	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
3	Respondent 1.0, 1.0C		392
	1.1, 1.2, 1.3C		
4	1.4-1.7, 1.8C		
	Respondent 5.0, 5.0C		392
5	5.1C-5.4C, 5.5-5.6		
	5.7C, 5.8, 5.8C		
6	5.9-5.10, 5.11C		
	5.13C		
7	Respondent	560	570
	Cross 1, 1A		
8			
	CUB 4.0, 4.0S		552
9	CUB 7.0, 7.0S		
10	CUB Cross 9	422	546
	CUB Cross 10	434	546
11	CUB Cross 11	438	546
	CUB Cross 12	465	546
12	CUB Cross 13	482	546
	CUB Cross 14	496	546
13	CUB Cross 15	538	546
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1 JUDGE GILBERT: Pursuant to the authority of
2 the Illinois Commerce Commission, I'll call Docket
3 08-0175.

4 If I can have appearances for the
5 record, please, beginning with the complaining party.

6 MS. SODERNA: Appearing on behalf of the
7 Citizens Utility Board, Julie Soderna, 309 West
8 Washington, Suite 800, Chicago, Illinois 60606.

9 MS. LIN: Appearing on behalf of Staff of the
10 Illinois Commerce Commission, Nora Naughton and
11 Jennifer Lin, 160 North LaSalle, Suite C-800,
12 Chicago, Illinois 60601.

13 MR. McMANAMAN: And appearing on behalf of
14 respondent, Martin McManaman and Kevin Clancy, Lowis
15 & Gellen, 200 West Adams Street, Suite 1900, Chicago,
16 Illinois 60606.

17 JUDGE GILBERT: All right. We're here on the
18 complaint of the Citizens Utility Board and the AARP
19 versus Illinois Energy Savings Corp., doing business
20 as U.S. Energy Savings Corp., which is now called
21 Just Energy. This is the second day of our
22 evidentiary hearing. Our first witness, I believe,

1 is Mr. Potter on behalf of the Company.

2 Mr. Potter, let me swear you in.

3 (Witness sworn.)

4 GORD POTTER,

5 called as a witness herein, having been first duly

6 sworn, was examined and testified as follows:

7 EXAMINATION

8 BY

9 MR. McMANAMAN:

10 Q Good morning.

11 A Good morning.

12 Q Can you please say and spell your last name

13 for the record.

14 A Yeah, it's Potter -- Gord Potter,

15 P-o-t-t-e-r.

16 Q And who do you work for?

17 A For Just Energy.

18 Q And did you prepare testimony in this case?

19 A Yes, I did.

20 Q How many pieces of testimony did you

21 prepare?

22 A Two.

1 Q And that's direct testimony on behalf of
2 the respondent and rebuttal testimony on behalf of
3 the respondent; correct?

4 A Yes.

5 Q And there's 8 exhibits to your direct
6 testimony?

7 A That's correct.

8 JUDGE GILBERT: Let's refer to those as
9 attachments.

10 MR. McMANAMAN: Attachments.

11 JUDGE GILBERT: I know they're labeled
12 exhibits, but it will be clearer if you say
13 "attachments."

14 MR. McMANAMAN: Sure. Thanks, your Honor.

15 BY MR. McMANAMAN:

16 Q There's 8 attachments to your direct
17 testimony?

18 A That's correct.

19 Q And there's 13 attachments to your rebuttal
20 testimony?

21 A Yes.

22 Q And was this testimony prepared by you or

1 under your direction?

2 A Yes, it was.

3 Q And you recently made a couple corrections
4 to that testimony; is that right?

5 A That's correct, yes.

6 Q And aside from those few corrections that
7 have been circulated to counsel, if -- are the
8 answers to the questions in your testimony the same
9 now as they were when you prepared the testimony?

10 A Yes.

11 Q And, to your knowledge, all of the
12 corrected versions of your testimony has been filed
13 with the Clerk of the Commission; is that right?

14 A Yes, that's correct.

15 MR. McMANAMAN: So, your Honor, for Mr. Potter
16 I would move to enter into evidence his direct
17 testimony, which is marked as Respondent Exhibit 1.0.
18 And there is a 1.0 and a 1.0C. And then for the
19 attachments to his direct testimony, they are marked
20 1.1 through 1.8 and there's two of them that are --
21 also have the -- or I'm sorry -- that only have a C
22 version. It's 1.3C and 1.8C. And then with respect

1 to his rebuttal testimony, there is -- it's marked as
2 Exhibit 5.0, and there is a -- it's 5.0C and 5.0 and
3 then the attachments are 5.1C, 5.2C, 5.3C, 5.4C, 5.5,
4 5.6, 5.7C, 5.8C, and 5.8 regular, 5.9, 5.10, 5.11C
5 only, 5.12, and 5.13C only. And I have a courtesy
6 copy of all that right here for your Honor. Just
7 what you need; right? More paper.

8 JUDGE GILBERT: All right. I think I have
9 that.

10 Are there objections to the admission
11 of any or all of these?

12 MS. SODERNA: No objection.

13 MS. LIN: None.

14 JUDGE GILBERT: Respondent's Exhibits 1.0,
15 1.0C, 1.1, 1.2, 1.3C, 1.4, 1.5, 1.6, 1.7, 1.8C, 5.0,
16 5.0C, 5.1C, 5.2C, 5.3C, 5.4C, 5.5, 5.6, 5.7C, 5.8,
17 5.8C, 5.9, 5.10, 5.11C 5.12 and 5.13C are all
18 admitted.

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2 (Whereupon, Respondent's
3 Exhibit Nos. 1.0, 1.0C, 1.1,
4 1.2, 1.3C, 1.4, 1.5, 1.6, 1.7,
5 1.8C, 5.0, 5.0C, 5.1C, 5.2C,
6 5.3C, 5.4C, 5.5, 5.6, 5.7C,
7 5.8, 5.8C, 5.9, 5.10, 5.11C,
8 5.12 and 5.13C were all
9 admitted into evidence.)
10 JUDGE GILBERT: I hope I got those all correct.
11 Mr. Clancy, I think you're keeping
12 score. Did I get them all?
13 MR. CLANCY: Excellent. You do a very good
14 job.
15 JUDGE GILBERT: CUB cross?
16 CROSS-EXAMINATION
17 BY
18 MS. SODERNA:
19 Q Good morning, Mr. Potter.
20 A Good morning, Miss Soderna.
21 Q My name is Julie Soderna. I'm with the
22 Citizens Utility Board, as you know.

1 And you're the current senior vice
2 president of regulatory affairs for Just Energy; is
3 that right?

4 A I'm actually the executive vice president
5 of legal and regulatory affairs now.

6 Q And is it -- is the corporation for which
7 you hold that position Just Energy Ontario or Just
8 Energy Corp., or --

9 A It's Just Energy Corp.

10 Q Okay. So legal and regulatory affairs, did
11 you say?

12 A Yes.

13 Q And Just Energy Corp., includes Illinois
14 Energy Savings Corp., which previously operated under
15 the name of U.S. Energy savings Corp., and now
16 operates as Just Energy Illinois; is that right?

17 A Well, they're technically affiliates,
18 right.

19 Q Is the legal name still Illinois Energy
20 Savings Corp., of the Illinois affiliate?

21 A No, it would be Just Energy Illinois Corp.,
22 I believe.

1 Q Okay. But since all the testimony and
2 discovery in this proceeding uses either the name
3 Illinois Energy Savings Corp., or U.S. Energy Savings
4 Corp., to alleviate any confusion in my questions
5 today I'll be referring to the Company as --
6 referring to "U.S. Energy" or "the Company" as Just
7 Energy Illinois. Okay?

8 A Okay. Yes.

9 Q Sorry. I'll be referring to Just Energy
10 Illinois as "U.S. Energy" or "the Company." Let me
11 be clear.

12 Okay. And you were present in the
13 hearing room yesterday for the cross-examination of
14 Mr. Hames, Mr. Nicholson and Miss Findley; is that
15 right?

16 A Yes, I was.

17 Q So some of the questions I'll be asking you
18 will sound familiar to those asked of the other
19 witnesses, but I just wanted to make sure we're on
20 the same page about a few things. So you'll bear
21 with me on that; right?

22 A Yeah, absolutely.

1 Q And you've been with the Company since
2 2003; is that right?

3 A That's correct.

4 Q And that's about the time U.S. Energy
5 sought and received its certificate to operate as an
6 alternative gas supplier from this Commission; is
7 that right?

8 A That's correct.

9 Q And is it correct that you're the head of
10 the Regulatory Department for the Company?

11 A That's correct.

12 Q And your staff includes the vice president
13 of regulatory, two directors, two managers and
14 several other staff; is that correct?

15 A Yeah. For clarity it's one VP, three
16 directors and a couple of managers and other staff,
17 yes.

18 Q Does Frances Findley, the manager of
19 Corporate and Consumer Relations, does she report to
20 you?

21 A She reported directly to me until about a
22 month ago. And now she reports through a director to

1 me who manages all Compliance.

2 Q Which director?

3 A Her name is Jill Batta (ph).

4 Q I mean, what's her title? Director of...?

5 A Oh, director of consumer and corporate

6 relations.

7 Q Okay. Am I correct that Duncan Stiles is

8 the director of operations?

9 A He's a vice president of operations.

10 Q Okay. Did he used to be director of

11 operations?

12 A Yes.

13 Q When did he get promoted?

14 A I'm not sure exactly, but within -- I think

15 in the last year or so, I believe.

16 Q Does he report to you?

17 A No, he reports to our chief operating

18 officer.

19 Q Is it your understanding that Mr. Stiles

20 verified many of the Company's responses to data

21 requests in this proceeding?

22 A I noticed that he did to some of them, yes.

1 Q Are you able to testify about the
2 information in the data request responses he
3 verified?

4 A To the best of my ability I can, yes.

5 Q And Paul Goddard was at one time the
6 Company's vice president of regulatory; is that
7 right?

8 A No, he was a vice president in the Sales
9 Department.

10 Q Oh, I'm sorry. I misunderstood. Okay.

11 And -- but he's no longer with the
12 Company; is that right?

13 A That's correct.

14 Q Can you explain why he's no longer with the
15 Company?

16 A No, I can't. I wasn't privy to the
17 agreement or why he left. I just know he's no longer
18 with us.

19 Q You said "agreement," so you're familiar at
20 least that he signed a termination agreement; is that
21 right?

22 A I noticed that it was submitted as a data

1 request. That's how I know --

2 Q Response?

3 A -- it existed. I apologize. Data

4 response.

5 Q Did you review that?

6 A No, I just saw it was in there as a

7 response.

8 Q And you don't know any details about this

9 termination agreement?

10 A I do not.

11 MS. SODERNA: The agreement itself, right, is

12 confidential? I wasn't trying to skirt --

13 MR. McMANAMAN: Sure. I just was trying to

14 remember.

15 BY MS. SODERNA:

16 Q You describe yourself as the most senior

17 individual responsible for all aspects of regulatory

18 compliance; is that right?

19 A That's correct.

20 Q And you part of Ontario, Canada; correct?

21 A That's correct.

22 Q Am I correct that U.S. Energy sells its

1 products entirely through door-to-door sales?

2 A Mostly through door-to-door sales.

3 Q And then some referrals also?

4 A Some referrals. That's correct.

5 Q You state in your rebuttal testimony that

6 there's a managerial presence in Illinois that

7 consists of five regional distributors and one

8 regulatory manager; is that right?

9 A That was right at the time, yes.

10 Q The regional distributors work out of five

11 different offices throughout the Chicagoland area; is

12 that correct?

13 A That's correct.

14 MS. SODERNA: And I believe this was

15 dedesignated the total number of independent

16 contractors. I just want to make sure.

17 THE WITNESS: It would have been, I think.

18 MR. McMANAMAN: That's right.

19 BY MS. SODERNA:

20 Q So is it accurate that there are

21 approximately 130 independent contractors operating

22 in Illinois, currently?

1 A I believe it's a little less, but it's in
2 and around that area.

3 Q And for purposes of my questions today I'll
4 refer to "independent contractors" and "sales agents"
5 interchangeably. Are you with me on that?

6 A Yes.

7 Q And you were never a sales agent for the
8 Company, were you?

9 A No, I wasn't.

10 Q Currently the regulatory manager position
11 is held by Charles Ianello (ph); is that right?

12 A He's now a director; but, yes, that's
13 correct.

14 Q And what is his current title?

15 A He's director of regulatory affairs.

16 Q And is that for Just Energy Illinois or
17 Just Energy Corp.?

18 A Well, we're all technically paid by Just
19 Energy Corp., but he's -- I apologize -- I'm paid by
20 Just Energy Corp. He looks after Illinois and will
21 be paid, I think, out of the -- I believe it's out of
22 Illinois directly or it's out of the U.S. Energy sub.

1 I'm not sure. But he's paid out of a U.S. sub,
2 correct. If that's what your question was.

3 Q So is there a different regulatory manager
4 now?

5 A Charlie Ianello is the regulatory director
6 and we also have a compliance manager that works out
7 of Illinois now as well.

8 Q And that is supplanting the regulatory
9 manager position; is that right?

10 A It's assisting.

11 Q I'm sorry?

12 A It doesn't supplant it. It assists.

13 Q And Mr. Ianello is located in Springfield;
14 is that right?

15 A That's correct.

16 Q And he reports to -- does he report to the
17 VP regulatory still who's in Connecticut?

18 A That's correct. That's correct.

19 Q Even as a director?

20 A Yes.

21 Q And that person, the VP of regulatory
22 located in Connecticut reports to you; is that right?

1 A That is correct.

2 Q So Mr. Ianello does not directly or
3 indirectly manage or supervisor any Company
4 employees, regional distributors or sales agents; am
5 I correct?

6 A No, he does not. Yes, you're correct. He
7 doesn't supervisor them directly.

8 Q So his role is limited to things like
9 management and monitoring of regulatory activities,
10 establishing and maintaining effective relationships
11 with government and corporate energy policy, among
12 other things; is that right?

13 A Yes, those other things being compliance
14 issues that require his intervention with the sales
15 distributors from time to time.

16 Q The regional distributors don't report to
17 Mr. Ianello or you, do they?

18 A No, they do not.

19 Q In fact, regional distributors operate
20 under a service agreement and are not considered
21 employees; isn't that right?

22 A That's correct.

1 Q Regional distributors are responsible for
2 recruitment, interviewing and training of the sales
3 contractors; is that correct?

4 A That is correct.

5 Q And they also implement directives from the
6 CCR Group -- I'm sorry, for sake of the record, the
7 Corporate and Consumer Relations Group. I think I
8 got that wrong yesterday. So we'll refer to that as
9 the CCR Group, and the sales and marketing group; is
10 that right?

11 A That among other things, yes.

12 Q And under the regional directors are crew
13 coordinators; correct?

14 A That's correct.

15 Q And crew coordinators assistant in
16 overseeing sales contractors. Is that your
17 understanding?

18 A Yes, it is.

19 Q So U.S. Energy sells mostly long-term
20 fixed-price natural gas supply contracts consisting
21 of four or five years in duration; is that true?

22 A Yes, it is, mostly.

1 Q You have some other products, but that's
2 the bulk of your business; is that right?

3 A That's right, yes.

4 Q The contract provides customers a choice --
5 and I'm referring to the Illinois contract -- a
6 choice between either four or five years; is that
7 correct?

8 A It does, but we also offer a one and a
9 three-year now, and no longer offer the four.

10 Q So is it the same contract --

11 A No --

12 Q -- for all those products?

13 A -- it's a similar product, just the term is
14 different.

15 Q But the actual contract, the actual
16 agreement?

17 A Yes.

18 Q The printed agreement, is it the same for
19 all those products? So there would be like a
20 checkmark for which particular product is being
21 purchased. Is that how it works?

22 A I believe so. I don't think they're

1 different contracts.

2 Q So as it was before you offered the one to
3 three-year contracts, when you were only offering
4 four to five-year contracts, is it my understanding
5 correct that if the customer failed to make a
6 selection for four years versus five years, then the
7 sales agent would default to the five-year term; is
8 that right?

9 A No, the contract specifies on the front
10 that if they don't choose a four or five-year, that
11 the contract will be a five-year.

12 Q And is that -- how does it work with your
13 new contracts then?

14 A I believe it's similar, but I'd have to
15 check.

16 Q So if the customer doesn't make a choice,
17 then it's presumed five years; is that right?

18 A I can't confirm that. I'd have to look.

19 Q There's a comment in rebuttal testimony --
20 do you have it in front of you?

21 A No.

22 Q Maybe you should get it just for reference

1 purposes because I'm going to be referring to a
2 comment that was labeled as confidential and I just
3 want -- I'd like to discuss it, but I don't want to
4 muck things up too much. So I just wanted you to
5 look at it and make sure that's -- still needs to go
6 in camera. And it's at Page 21, Line 480 and 481.

7 A I'd like to comment, but it's blocked out.

8 Q Oh, you have the public version then?

9 MR. McMANAMAN: Sorry about that.

10 BY MS. SODERNA:

11 Q It doesn't seem to me like a comment that
12 requires confidential protection, but I want -- I
13 don't want to infringe on what's been designated. So
14 you've said similar things other places in your
15 testimony just not in those exact words.

16 MR. McMANAMAN: I think that should have been
17 dedesignated.

18 MS. SODERNA: And that's probably an error,
19 too. And I don't know that I ever caught it and
20 identified it either. But...

21 MR. McMANAMAN: We were just trying to remember
22 the original reason for designating it as

1 confidential. And I can't...

2 MR. CLANCY: I think that we dedesignated most
3 things that had to do with number of customers,
4 number of contracts, et cetera. And this falls into
5 that category.

6 MS. SODERNA: Okay. So do we all feel
7 comfortable that I would discuss this publically?

8 MR. McMANAMAN: Yes.

9 MS. SODERNA: Great.

10 BY MS. SODERNA:

11 Q So in your statement in your rebuttal
12 testimony at Page 21, Lines 480 and 481, you claim
13 that most customers choose five-year terms because
14 they value price certainty and long-term stability.
15 Is that still your testimony?

16 A And that's my view, yes.

17 Q And in a response to a CUB DR requesting
18 documents supporting that statement, the Company
19 objected that it was unduly burdensome but then went
20 on to respond that your statement was based on your
21 personal beliefs and experience; is that true?

22 A I believe that's true, yes.

1 Q Have you conducted any customer surveys to
2 substantiate this opinion?

3 A No, I haven't.

4 Q How about consumer focus groups?

5 A No, I haven't.

6 Q So your general assumption is that
7 customers purchase your product because they are
8 seeking predictability in their energy costs. Would
9 that be an accurate statement?

10 A No, it's my opinion because I've heard from
11 customers over the years that that's what they value
12 and that's why they buy it. It's not a presumption.
13 I apologize. It's not a presumption.

14 Q Okay. So it's based on your interactions
15 with customers?

16 A With customers.

17 Q And you don't argue, do you, that the
18 Company's four- to five-year fixed price contracts
19 offer any promised savings; right?

20 A I'm sorry.

21 Q You wouldn't posit, would you, that the
22 Company's four to five-year fixed-price contracts

1 offer any promised savings; right?

2 A That's correct.

3 Q Would you agree with me that your product
4 is more like a hedge or an insurance policy against
5 potentially rising or volatile utility gas costs?

6 A Yes, absolutely.

7 Q And, thus in your mind, the customers that
8 purchase U.S. Energy's long-term contracts understand
9 that they may save money or they may pay more as
10 compared to the utility price but they are simply
11 seeking stability in their gas costs; right?

12 A Yes.

13 Q And when we reference the utility gas costs
14 in referring to savings or losses, we're referring to
15 the purchased gas adjustment or PGA price. Are you
16 with me on that?

17 A I'm sorry. Just one more time.

18 Q In Illinois the utilities that operate, at
19 least Peoples Gas, North Shore Gas and Nicor Gas, the
20 relevant utilities where U.S. Energy operates, each
21 have what's called a purchased gas adjustment rate
22 adjustment mechanism for gas costs. Are you familiar

1 with that?

2 A Generally yes.

3 MS. SODERNA: If you can just give me one
4 minute. I'm sorry. I need to find something.

5 BY MS. SODERNA:

6 Q Sorry about that. So just for clarity, the
7 Company in devising the rate that it offers to
8 customers, includes different costs and among them
9 is -- I'm sorry. Strike that question.

10 So when the Company decides --
11 determines what rate it will offer customers, it
12 bases that on the cost of its own long-term gas
13 contracts with other suppliers; is that fair?

14 A In part, yes. Yes.

15 Q Okay. And built into the price that U.S.
16 Energy charges customers is some level of a premium
17 for that level of stability; is that fair?

18 A Can you be more specific?

19 (Whereupon, the following
20 proceedings were had of a
21 confidential nature and were
22 had in camera.)